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Laws, Courts and Communities in the Pennsylvania Backcountry, ca.1750-1800
Matthew C. Ward

In the early 1790s across western Pennsylvania groups calling themselves the “Whiskey Boys” intimidated and attacked both people and property, particularly collectors of the hated whiskey excise tax. Their activities climaxed on August 1, 1794 when a crowd of perhaps 7,000 protestors converged outside Pittsburgh. The mob was in an angry mood. Western Pennsylvania lawyer Hugh Henry Brackenridge reported that “the common language of the county... was, they were coming to take Pittsburgh; some would talk of plundering it; others of burning it. It was an expression that Sodom had been burnt by fire from heaven; but this second Sodom should be burned with fire from earth.” Alexander Addison later reminded readers of the *Pittsburgh Gazette* that these protestors had sought “a liberty to be governed by no law... a liberty of doing whatever mischief they pleased.”¹

The disorder that erupted in western Pennsylvania in the so-called Whiskey Rebellion seemed to many observers to be a culmination of many years of disorder in the Pennsylvania backcountry and of continual opposition by the poorer settlers of the region to the establishment of law and order. Throughout the second half of the eighteenth century, across western Pennsylvania, episodes of violence, disorder, and opposition to provincial and state authority were frequent and ubiquitous and many observers believed that the region had become overrun by lawlessness. Backcountry disorder and violence was hardly unique to Pennsylvania. In North Carolina in the 1760s backcountry settlers protested the iniquity of the court and electoral systems in the Regulator

¹ Hugh Henry Brackenridge, *Incidents of the Insurrection in the Western Parts of Pennsylvania in the Year 1794*, 3 vols. (Philadelphia: John McCulloch, 1795). 1:44-45; *Pittsburgh Gazette*, December 27, 1794

Movement. In New York, tenants protested against their landlords. In western Massachusetts, in Shays' Rebellion western farmers closed the courts in protest at their inability to pay the state's taxes. In Maine the Liberty Men protested the proprietors' land policies.² However, in western Pennsylvania the protests were different. Alexander Hamilton tried to dismiss western protests as the work of a few drunken Scots-Irish vagabonds. Indeed, the very term "Whiskey Rebellion" seems to have been coined by Hamilton and first appears in a letter by him in December 1794. By creating an image of the rebellion focused solely on whiskey, Hamilton trivialized and marginalized the protests of western settlers and also reinforced the perception that much of the discontent was focused on disorderly Scots-Irish settlers.³

What was unusual about the protests in western Pennsylvania, however, was firstly the extent of the protest in terms of its depth of support within the community, the geographic spread of disorder, and the length of disorder spanning from the 1760s to the 1790s. Although the scope and nature of the Pennsylvania backcountry changed dramatically from the years before the Seven Years' War, when frontier settlements first crossed the Susquehanna River, to the years around the Whiskey Rebellion when settlements had reached the Ohio River, the protests and the nature of the disorder remained remarkably constant. In particular, the complex relationship of the protestors with the

² Marjoleine Kars, *Breaking Loose Together: The Regulator Rebellion in Pre-revolutionary North Carolina* (Chapel Hill: University of North Carolina Press, 2002); Thomas J. Humphrey, *Land and Liberty: Hudson Valley Riots in the Age of Revolution* (DeKalb: Northern Illinois University Press, 2004); David P. Szatmary, *Shays' Rebellion: The Making of an Agrarian Insurrection* (Amherst: University of Massachusetts Press, 1980); Alan Taylor, *Liberty Men and Great Proprietors: The Revolutionary Settlement on the Maine Frontier, 1760-1820* (Chapel Hill: University of North Carolina Press, 1990).

³ Alexander Hamilton to Angelica Church, 8 December 1794, Harold Coffin Syrett, ed. *The Papers of Alexander Hamilton*, 27 vols. (New York: Columbia University Press, 1961), 17:428-29. For a contemporary, if hardly objective, account of the role of Hamilton in shaping perceptions of the movement see William Findley, *History of the Insurrection: In the Four Western Counties of Pennsylvania in the Year MDCCXCIV...* (Philadelphia: Samuel Harrison Smith, 1796). Bouton, "A Road Closed," 886.

county courts and the process of law, played a central role in fermenting dissent. Despite the centrality of the county courts to many of the protests, although western Pennsylvania farmers sought at times to hinder the activities of the courts—blocking roads or intimidating justices—unlike the Carolina Regulators or the protestors in Shays’s Rebellion in western Massachusetts, rarely did they seek to halt completely the activities of the court. As Terry Bouton has shown, in many ways these protestors in western Pennsylvania viewed the courts as a means of protest rather than a target of protest, but even more importantly protestors sought to ensure that the courts remained equitable and judged cases as much according to their “fairness” as according to the letter of the law. This drew them into conflict with the growing pressures for codification of the law which came largely from eastern merchants who sought predictability in law rather than equity. Indeed, there was a surprising continuity in the attitudes of farmers towards the county court as an institution that continued long after the American Revolution. The Revolution itself was not a dramatic turning point in the relationship between western farmers and the court, but rather the changes that occurred in the 1790s which attempted to create a more professional, efficient, and business-oriented system transformed this relationship. Understanding the complexities of this relationship provides an important window into the ever-changing relationship between law, the courts and communities, during the era of the American Revolution.⁴

Disorder in the Pennsylvania backcountry first became noticeably widespread in the wake of the Seven Years’ War. In 1764 Presbyterian minister John Elder, watching his neighbors marching

⁴ Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge, Mass.: Harvard University Press, 1977); Christopher Tomlins, “American Legal History in Retrospect and Prospect: Reflections on the Twenty-fifth Anniversary of Morton Horwitz’s *Transformation of American Law*,” *Law & Social Inquiry* 28 (2003): 1135-48; Terry Bouton, “A Road Closed: Rural Insurgency in Post-Independence Pennsylvania,” *The Journal of American History* 87(2000): 855-87; J. R. Pole, “Reflections on American Law and the American Revolution,” *William and Mary Quarterly* 50 (1993): 123-59.

with the Paxton Boys, was agonized at the “enraged multitude” that surrounded him, stirring up “great confusions” and “the most warm & furious tempers.” Over the following years bands of frontiersmen calling themselves the Black Boys, with blackened faces in imitation of British land protestors of the era, attacked convoys carrying trade goods to Fort Pitt.⁵ By 1770 British officers at Fort Pitt fretted that western Pennsylvania backcountry had become “the Azylum of... idle Vagabonds escaped from Justice, who in time might become formidable, and subsist by Rapine and plundering the lower Countrys.”⁶ The Revolutionary War did not end such disorder but only seemed to heighten it. Throughout the war western Pennsylvanians resisted the activities of Continental Army commanders in Pittsburgh, hamstringing the conduct of the war in the west. In 1781 “several armed Banditties” even attacked the homes and property of militia officers, threatening their lives, burning their crops and killing their livestock. After the Revolution disorder continued to smolder. In 1791 competing bands of militia in Lewistown in Mifflin County rioted and clashed with provincial officers.⁷

⁵ John Elder to Colonel Shippen, February 1, 1764, Elder Collection, Historical Society of Dauphin County, Harrisburg, PA; John Broad, “Whigs and Deer-Stealers in Other Guises: A Return to the Origins of the Black Act,” *Past & Present* 119 (1988): 56-72; Matthew C. Ward, “The ‘Peaceable Kingdom’ Destroyed: The Seven Years’ War and the Transformation of the Pennsylvania Backcountry,” *Pennsylvania History: A Journal of Mid-Atlantic Studies* 74 (2007): 247-79.

⁶ Gen. Thomas Gage to Lord Hillsborough, November 10, 1770, Clarence Edwin Carter, ed. *The Correspondence of General Thomas Gage with the Secretaries of State, 1763-1775*, 2 vols. (New Haven: Yale University Press, 1931), 1:279.

⁷ James Marshall to Joseph Reed, August 8, 1781, Samuel Hazard, *Pennsylvania Archives*, 1st Series (Philadelphia: Printed by J. Severns, 1852). 9:344-45; Brackenridge, *Incidents of the Insurrection*: 144-45; Daniel P. Barr, *A Colony Sprung from Hell: Pittsburgh and the Struggle for Authority on the Western Pennsylvania Frontier, 1744-1794* (Kent, Ohio: The Kent State University Press, 2014). 169-251; Tim H. Blessing, “The Lewistown Riots, 1791-1793: A Micro-Analytic Approach,” *Pennsylvania History* 71 (2004): 285-321; Bouton, “A Road Closed,” 855-87; Kevin Kenny, *Peaceable Kingdom Lost: The Paxton Boys and the Destruction of William Penn’s Holy Experiment* (New York: Oxford University Press, 2009); Thomas Slaughter, *The Whiskey Rebellion: Frontier Epilogue to the American Revolution* (New York: Oxford University Press, 1986); Joseph S. Tiedemann, “A Tumultuous People: The Rage for Liberty and the Ambiance of Violence in the

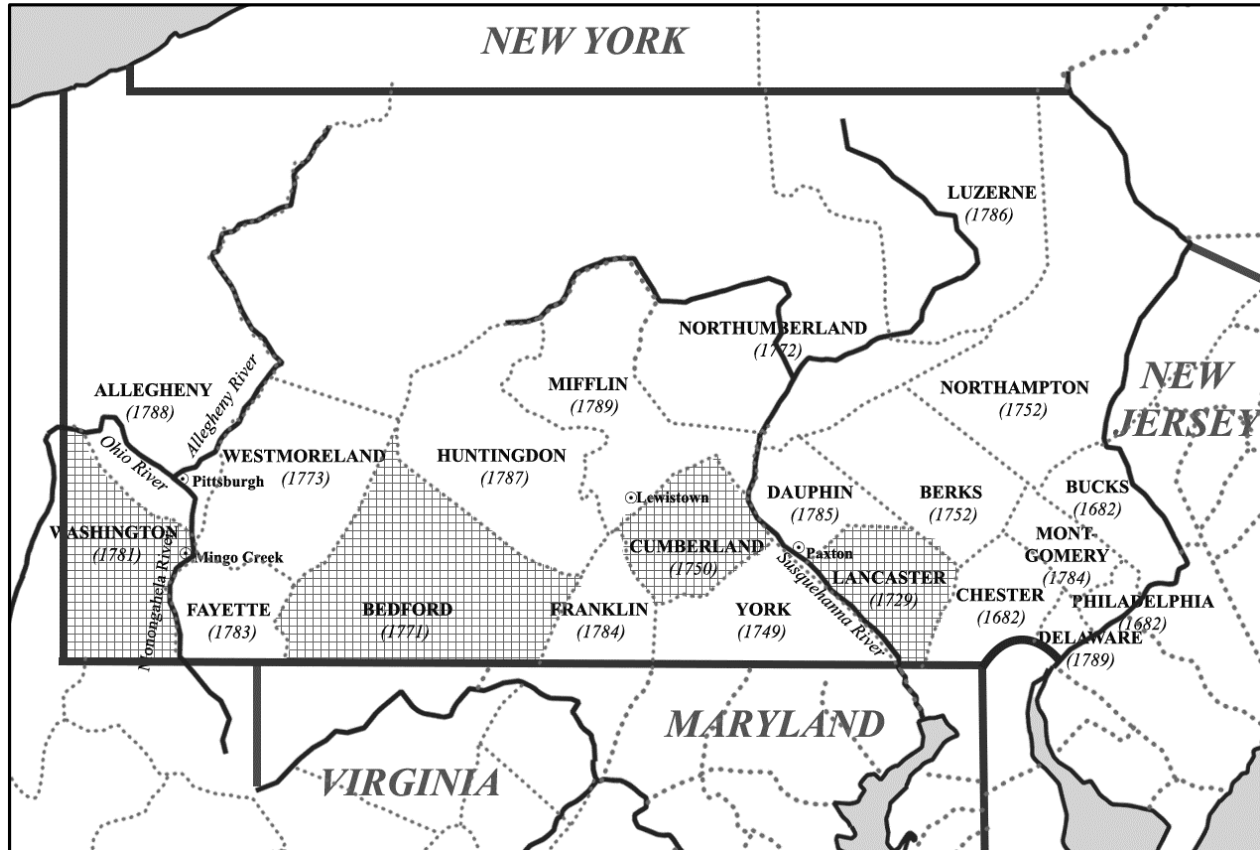


Figure 1: Pennsylvania Counties, 1790 (Counties examined are hatched)

Contemporaries in the middle of the eighteenth century had few doubts about who was to blame for the disorder that they saw in the Pennsylvania backcountry: the flood of Scots and Irish immigrants who moved into the region in search of cheap land and who brought with them from the British Isles traditions of violence and criminality. James Logan, who was Scots-Irish himself and was responsible for directing many of the Scots-Irish immigrants towards the Pennsylvania backcountry, maintained that “a settlement of five families from the North of Ireland gives me

Middle Colonies in the Years Preceding the American Revolution,” *Pennsylvania History* 77 (2010): 87-431.

more trouble than fifty of any other people.”⁸ In part it was the sheer number of Irish and Scots migrants who flooded the backcountry that caused such concern. The court records of western Pennsylvania are certainly littered with Scottish and Irish sounding names and some historians have also seen the Scottish and Irish roots of backcountry settlers as being responsible for the violence and disorder in the backcountry. Forrest McDonald and Grady McWhiney perhaps argued most strongly that Scots-Irish settlers brought a culture of violence to the American backcountry. These ideas were refined by David Hackett Fischer in *Albion’s Seed*. Fischer argued that the societies and cultures of early America were fundamentally shaped by the nature of those who migrated there. The settlers who moved to the backcountry of western Pennsylvania, Fischer argued, shared a common “border” culture. In Ulster and in northern England they had lived in disputed territories where the quarrels between kings, according to Fischer, became a criminal’s opportunity “to rob and rape and murder with impunity.” While Fischer’s work has been subject to much criticism, the concept that Scots and Scots-Irish settlers somehow brought traditions of violence with them to North America has remained. Fischer’s conclusions have been supported by Jack Marietta and G.S. Rowe’s studies of crime in early Pennsylvania. Marietta and Rowe who have argued that it was the flood of Scots-Irish immigrants into Pennsylvania from the early 1720s onwards that sparked an outbreak of violence and murders in the colony. However, these views do not correspond with perspectives from Europe. Recent scholarship has conclusively demonstrated that eighteenth century Ireland and Scotland were not overwhelmed by crime waves and the societies from which these

⁸ Maldwyn A. Jones, “The Scotch-Irish in British America,” in *Strangers Within the Realm: Cultural Margins of the First British Empire*, ed. Bernard Bailyn (Chapel Hill: University of North Carolina Press, 1991), 297.

migrants came were not beset by rampant disorder and crime. Consequently, it is difficult to argue that these migrants could have simply imported traditions of violence from the British Isles.⁹

The records of the county courts for western Pennsylvania can provide an important insight for examining who appeared before the courts and the extent to which there is evidence for rampant disorder and petty crime in particular communities. The Pennsylvania Judiciary Act of 1722 had provided for Courts of Quarter Session to be established in each county with a number of justices to have powers in cases of debt, slander, trespass, and all criminal actions exception treason, murder, manslaughter and other serious crimes. The only principal change came during the Revolution when justices of the peace became jointly selected by residents of each district and the governor. The Court of Quarter Sessions remained the principal county court until 1790 when the Second Pennsylvania Constitution gave its jurisdiction to the Court of Common Pleas which had previously dealt only with civil cases. It was to these courts that backcountry settlers would bring their complaints, or be brought to face justice. These courts played a vital and central role within their communities and had been a crucial component of William Penn's vision for a "peaceable kingdom," for the courts were used not only to enforce law but more importantly to resolve disputes and to enforce community standards. It was through presentments of the grand jury, where members of the county community would bring evidence of their neighbors' misdemeanors, that social order could be visibly

⁹ David Hackett Fischer, *Albion's Seed: Four British Folkways in America* (New York: Oxford University Press, 1989). 626; Louis A. Knafla, ed. *Crime and Criminal Justice in Europe and Canada* (Waterloo, Ontario: Wilfred Laurier University Press, 1981); Richard McMahon, ed. *Crime, Law and Popular Culture in Europe, 1500-1900* (Cullompton, Devon, UK: Willan, 2008); Jack D. Marietta and G.S. Rowe, *Troubled Experiment: Crime and Justice in Pennsylvania, 1682-1800* (Philadelphia: University of Pennsylvania Press, 2006). 68-72; Forrest McDonald and Grady McWhiney, "The Antebellum Southern Herdsman: A Reinterpretation," *The Journal of Southern History* 41(1975): 147-166. For a critique of Fischer see Ned C. Landsman, "Border Cultures, the Backcountry, and "North British" Emigration to America," *William and Mary Quarterly* 48 (1991): 253-59.

maintained and the boundaries of acceptable behavior defined.¹⁰

County	State	Years	Annual prosecution rate per 100,000
Muhlenberg	KY	1803-1809	203
Washington	OH	1808-1812	187
Champaign	OH	1808-1812	156
Johnstown	CANADA	1812-1816	153
Chester	PA	1788-1792	106
Chester	PA	1798-1802	175
Chester	PA	1808-1812	118
Cumberland	PA	1750-1759	74
Cumberland	PA	1760-1769	69
Washington	PA	1788-1792	53

Table 1: Comparative Prosecution Rates for Assault¹¹

In the middle years of the eighteenth century, however, as backcountry communities became more heterogeneous and as fears of violence seem to have climbed, the role of the court came under

¹⁰ Bouton, "A Road Closed," 855-87; Hugh Henry Brackenridge, *Law Miscellanies: Containing an Introduction to the Study of the Law....* (Philadelphia: P. Byrne, 1814). 161-64; Boyd Crumrine, *The Courts of Justice, Bench and Bar of Washington County, Pennsylvania* (Washington PA: Washington Bar Association, 1902). 32-37; Alfred L. Brophy, "'For the Preservation of the King's Peace and Justice': Community and English Law in Sussex County, Pennsylvania, 1682-1696," *The American Journal of Legal History* 40 (1996): 181-82, 206; Mary Ann Shugart and Barbara Jean Shugart, "History of the Courts of Cumberland County," (Carlisle PA: Cumberland County Bar Association and the Cumberland County Historical Society, 1971), 3; William M. Offutt, *Of "Good Laws" and "Good Men": Law and Society in the Delaware Valley, 1680-1710* (Urbana: University of Illinois Press, 1995).

¹¹ The court data has been collected from Muhlenberg County, Criminal Case Files, Muhlenberg County Circuit Court Minute Book, Kentucky State Archives, Frankfort, KY; Washington County, Ohio, Court of Common Pleas, Final Records, Washington County Court House, Marietta, Ohio; Champaign County Ohio, Court of Common Pleas Book, Ohio Historical Society, Columbus Ohio; Johnstown District Quarter Sessions Books, Archives of Ontario, Toronto; Chester county data has been extracted from Quarter Sessions Indictment Records, Chester County Archives and Record Services, West Chester PA, <http://www.chesco.org/index.aspx?NID=1399> (accessed 22 September 2013); Data for Cumberland is taken from Cumberland County Court of Quarter Sessions indictments, Cumberland County Historical Society, Carlisle, PA and Marietta and Rowe, "Violent Crime, Victims, and Society in Pennsylvania, 1682-1800," 35. Washington County Court of Quarter Sessions Books, Washington County Court House and Law Library, Washington, PA; Gerald H. Smith, *Bedford County, Pennsylvania Quarter Sessions, 1771-1801* (Westminster, MD: Heritage Books, Inc, 2010).

increasing pressure. Yet there is a strange paradox in the patterns of indictments for violent crime which came before the county courts of western Pennsylvania in the second half of the eighteenth century. While many accounts by both contemporaries and modern scholars portray the west of Pennsylvania as particularly violent and disordered, the rate of prosecution in the county courts for violent crime declined and was substantially lower in western counties than in eastern counties and was lower than elsewhere in the American, and even Canadian, backcountry. Some historians, such as Marietta and Rowe, have suggested that this indicates that assaults and violent crimes were less common in the west than they were in the east and, in particular, much lower than in urban areas such as Philadelphia and that the early west was not the locus of violence as so often presumed.¹²

The county court records of western Pennsylvania seem to support this conclusion. However, it is extremely easy to confuse the indictment rate—the number of people who appeared before the courts accused of crime—with the rate of crime itself; the two are not necessarily connected. Particularly in a society such as eighteenth century Pennsylvania which relied on individuals to report and prosecute crime, rather than relying on investigation by state authorities, a low rate of indictment for crime may reveal more about a society's attitudes to the court and the relationship

¹² See for example Jack D. Marietta and G. S. Rowe, "Violent Crime, Victims, and Society in Pennsylvania, 1682-1800," *Pennsylvania History* 66 (1999): 33.

between the court and community than it does about the actual rate of criminal activity. An examination of indictments by the Court of Quarter Sessions in the backcountry counties of Lancaster, 1729-1750, Cumberland, 1750-1789, Bedford 1771-1792, and Washington, 1782-1797, therefore provides significant information not about what crimes were committed but about what



Figure 2: The Upper Ohio Valley and Great Lakes Region in the Late Eighteenth Century

crimes local communities thought should be punished, what disputes required the intervention of the local county court, and about the changing relationship between court and community.¹³

The records of Quarter Sessions can allow an examination of how far settlers of different ethnic origins became embroiled in the court system. By studying the proportion of settlers with surnames of an identifiable ethnicity it is possible to examine whether settlers with surnames of one particular ethnicity were more or less likely to be brought before the court, and as Marietta and Rowe have argued “the recurrence of Scots-Irish names among the accused is unmistakable.”¹⁴ While surname analysis is beset with difficulties, and it is impossible to identify the ethnicity of individuals with any precision—there is a tendency for all names to be Anglicized and distinguishing between Scottish and Scots-Irish names is extremely difficult—by using broad classes of ethnic identity and comparing the frequency with which surnames of different ethnic identity appeared in court records and tax records, it is possible to establish where there were any notable variations between different broad ethnic groups defined by surnames.¹⁵

¹³ The court records utilised throughout this study are Lancaster County Court of Quarter Sessions Books, Lancaster County Historical Society, Lancaster, PA; Cumberland County Court of Quarter Sessions indictments, Cumberland County Historical Society, Carlisle, PA; Washington County Court of Quarter Sessions Books, Washington County Court House and Law Library, Washington, PA; Gerald H. Smith, *Bedford County, Pennsylvania Quarter Sessions, 1771-1801* (Westminster, MD: Heritage Books, Inc, 2010). These counties were selected because of their location in western Pennsylvania, and also because of the accessibility and preservation of their records, both tax lists and court records.

¹⁴ Marietta and Rowe, “Violent Crime, Victims, and Society in Pennsylvania, 1682-1800,” 33.

¹⁵ These figures do not and cannot provide estimates for the ethnic composition of the counties, but merely provide the numbers of individuals whose surnames belong to a group of names which can be assigned to a particular ethnic origin. It can be assumed that settlers with a surname related to a specific ethnic origin were more likely than the remainder of the population to be from that ethnic group; a settler with the surname Campbell was more likely to be of Scottish origin than a settler with the surname Smith. This does not mean that an individual with the surname Campbell had to be Scottish or a settler with the surname Smith was not Scottish, but it can be presumed, for instance, that the 181 settlers in Cumberland County whose surnames were Armstrong, Wilson, Wallace, Henderson and Montgomery, included far more settlers of Scottish origin than the 144 settlers whose surnames were Smith or Miller. It can further be presumed that if settlers of a particular ethnic

Ethnic origin of surname	Appearance in Tax Lists ¹⁶		Appearance as Accused ¹⁷		Appearance as Prosecutors	
German & Dutch	386	6%	117	6%	75	7%
Irish	846	14%	368	18%	174	16%
Scottish	1803	29%	540	27%	299	28%
Scots-Irish ¹⁸	420	7%	151	7%	79	7%
English	2574	42%	854	42%	453	42%
Totals	6191		2031		1072	

Table 2: Ethnic origin of surnames of court participants for petty criminal cases in Cumberland County, 1750-1789

background were more likely to appear before the county court than the population as a whole—if Irishmen were more likely to commit crimes than other members of the community for instance—then individuals whose surnames belong to that ethnic origin would appear more frequently in the court records than the tax records representing the entire community. By comparing surname distribution across court records and tax records it is therefore possible to provide a simple test of whether settlers of a particular ethnic origin were more likely to appear before the court indicted for crime than settlers of a different ethnic origin. The main methodological problem is whether a particular group of individuals were less likely to appear on the tax records than the rest of the community, for instance if settlers of Irish descent were less likely to appear on the tax records because they were too poor or too mobile. Because the Pennsylvania tax records of this period were relatively comprehensive, and did include the names of tenants and “inmates” living in other people’s household, this is not likely to be a particular problem. Over 10,000 surnames and their variants have been classified alongside the Pennsylvania tax records of over 20,000 individuals. Surnames have been identified using Patrick Hanks, *Dictionary of American Family Names* (Oxford: Oxford University Press, 2003). and data produced for the British Economic and Social Research Council’s “Spatial Literacy Project” <http://www.publicprofiler.org/> last accessed May 5, 2015. For a discussion of the problems of using surname analysis see Thomas L. Purvis, “The European Ancestry of the United States Population, 1790: A Symposium,” *William and Mary Quarterly* 41 (1984): 85-101; Paul A. Longley, Richard Webber, and Daryl Lloyd, “The Quantitative Analysis of Family Names: Historic Migration and the Present Day Neighborhood Structure of Middlesbrough, United Kingdom,” *Annals of the Association of American Geographers* 97 (2007): 31-48; Pablo Mateos, *Names, Ethnicity and Populations: Tracing Identity in Space*, Advances in Spatial Science (Berlin: Springer Berlin Heidelberg, 2014). 117-44.

¹⁶ Cumberland County Tax List, 1760, Cumberland County Historical Society, Carlisle, Pennsylvania. Cumberland County Tax List, 1778, William Henry Egle and John Blair Linn, eds., *Pennsylvania Archives*, 30 vols., 3rd Series (Harrisburg, Pa: C. M. Busch, 1896), 20:3-114..

¹⁷ Quarter Sessions indictments, Cumberland County Historical Society, Carlisle, Pa.

¹⁸ Scots-Irish names are a subset of Scottish and Irish names and are surnames which are most likely to occur in Ulster. They have been identified using data from the “Spatial Literacy Project” and Edward Neafsey, *Surnames of Ireland: Origins and Numbers of Irish Surnames* (Kansas City, Mo: Irish Genealogical Foundation, 2002)..

Ethnic origin of surname	Appearance in Tax Lists ¹⁹		Appearance as Accused ²⁰		Appearance as Prosecutors	
	N	%	N	%	N	%
German & Dutch	513	7%	44	6%	5	4%
Irish	738	10%	62	9%	14	11%
Scottish	1419	19%	157	23%	34	28%
Scots-Irish	378	5%	25	4%	7	6%
English	3563	48%	332	49%	64	52%
Totals	7495		681		122	

Table 3: Ethnic origin of surnames of court participants for petty criminal cases in Washington County, 1782-1797

What is most striking about the surnames of those who appeared before the county courts is that despite the arguments of contemporaries and many historians about the role of the Scots and Irish in propagating violence, the surnames of Scots, Irish, and Scots-Irish origins were not particularly overrepresented in the court records in western regions. If these settlers were guilty of much of the disorder in the backcountry, they certainly were not being brought to the county courts in large numbers to answer for their misdemeanors. In Cumberland County residents with surnames of Scottish origin made up approximately twenty-nine percent of the names on the county's tax list, but only twenty-seven percent of the names of those who appeared before the court. Residents with Irish surnames made up fourteen percent of the county's tax list, but eighteen percent of the names of the accused, suggesting that perhaps settlers with Irish surnames, which includes the Scots-Irish, were only slightly more likely to appear before the court than other settlers. However, this does not

¹⁹ Washington County Tax List 1781 [1782] Hazard et al., *Pennsylvania Archives*, 3d Ser. Vol 22:701-82. Washington County, Board of County Commissioners Tax Records, LR 271.8, Pennsylvania State Archives, Harrisburg.

²⁰ Washington County Court of Quarter Sessions Books, Washington County Court House and Law Library, Washington, PA.

appear to be the case in Washington County. In Washington settlers with names of Irish origin made up ten percent of the tax lists, but only nine percent of the accused, while settlers with Scottish names made up nineteen percent of the names on tax lists and twenty-three percent of the accused. Taken together these figures suggest that there was, at best, only a slight tendency for Scottish and Irish settlers to appear more frequently in court than settlers from other backgrounds. Evidence from the court records thus suggests that despite the popular image that frontier was overwhelmed by disorder caused by Irish and Scots-Irish settlers, they did not comprise an undue proportion of those appearing before the courts.

Another feature that contemporaries associated with violence in the west was poverty. The men who formed the mob that assembled outside Pittsburgh in the summer of 1794 were characterized as “miserably poor.”²¹ Poverty was also a feature associated with Scots-Irish immigrants; George Armstrong maintained that “nine tenths of ‘em are miserably poor.”²² Historians have also pointed to the poverty of those who were accused of violence. As evidence of their poverty, Jack Marietta and G.S. Rowe have demonstrated that seventy-two percent of those who were accused of crime in eighteenth century Chester County did not appear in the county tax lists.²³ These figures are closely echoed in the court records of Cumberland, Bedford, and Washington Counties. In Cumberland County, 1,451 out of 2,038 individuals indicted by the county court between 1750 and 1789, or seventy-two percent, cannot be located in the tax lists of 1760 or 1778; in Bedford County between 1771 and 1792 472 out of 643 indicted, or seventy-three percent could not be located in the tax lists of 1775 and 1783; in Washington County 444 out of 689 of those

²¹ Slaughter, *Whiskey Rebellion*: 186.

²² George Armstrong to Richard Penn, October 30, 1764, Penn Mss: Official Correspondence, 9:284, Historical Society of Pennsylvania, Philadelphia.

²³ Marietta and Rowe, *Troubled Experiment*: 90-91.

indicted between 1782 and 1797, or sixty-four percent, cannot be located on the tax lists of 1781 or 1789. This would seem at first to support the conclusion that poorer settlers may well have been over-represented amongst those appearing before the court.²⁴

However, the high percentage of the accused missing from the tax lists should not be taken as clear evidence that most of people who appeared before the county court were simply too poor for their names to appear in those lists. Firstly, many people may have left the county before or arrived after the tax list was recorded. Similarly, tax lists only record the head of household, and quite obviously not all those who were accused of a crime were the head of a household; children would probably not have been major perpetrators of crime, but almost no women appear on the tax list, although they did appear before the court, and dependent sons and servants could all be expected to be accused of crime but did not appear on the tax list. There are many other additional reasons why individuals may not be identified. In many instances individuals cannot be identified because there was more than one person with the same name, a frequent occurrence in as many as ten percent of cases and a problem that was exacerbated because of the tendency of many settlers to move west in family groups with relatives sharing names. Similarly, people appeared before the court who may have committed a crime within one county but who lived in another county. Indeed, from warrants issued to the sheriffs it is clear that many accused did reside outside the county in which the crime had occurred.²⁵

²⁴ Cumberland County Tax List, 1760, Cumberland County Historical Society, Carlisle, Pennsylvania; Cumberland County Tax List, 1778, William Henry Egle and John Blair Linn, eds., *Pennsylvania Archives*, 30 vols., 3rd Series (Harrisburg, Pa: C. M. Busch, 1896), 20:3-114; Bedford County Tax Lists 1775 and 1783, *ibid.*, 22:87-116, 205-69; Washington County Tax List 1781 [1782] *ibid.*, 22:701-82.; Washington County, Board of County Commissioners Tax Records, LR 271.8, Pennsylvania State Archives, Harrisburg.

²⁵ Cumberland, Bedford and Washington also experienced major boundary changes during the period, as new counties were divided from the older counties. Consequently, many individuals may

Further evidence that non-appearance in the tax lists does not necessarily imply poverty can be discovered by examining the records of those who served on the petit juries of these counties. Of 973 jurors named in the Washington County Quarter Sessions records, only 445 can be definitively identified on the tax lists of 1781 or 1789, leaving fifty-four percent unidentified. Similarly, in Bedford county forty-five percent of jurors were missing from the tax lists. Jurors were established residents of the county who were to be selected by the sheriff from the tax payers of the county and should therefore appear on the tax lists, that so many cannot be identified on the tax lists suggests very strongly that non-appearance in the tax-lists cannot conclusively prove poverty.²⁶

Even if the non-appearance of so many of the accused in the tax lists is disregarded, if those accused of crimes were in fact the poorer residents of these communities then those whose names can be identified should still be more impoverished than the typical settler. However, this is not the case. In Lancaster, Cumberland, Bedford and Washington Counties, those who were indicted of crimes were often wealthier than the average settler. In Washington County, for instance, the mean landholding of all taxpayers was 163 acres, but the mean landholding of those who were indicted of crimes was 248 acres; those settlers who were indicted for crimes owned fifty percent more land than the county mean. Indeed, some of the wealthiest members of these communities appeared before the court. Gabriel Cox, who had the eighth highest tax assessment in Washington County in 1781, was indicted for assault four times in 1782 alone.

have appeared in the records of neighbouring counties. The tax lists and court records may also contain substantially different spellings of the same name, making identification difficult.

²⁶ The data for Cumberland is more problematic but only 26.7% of jurors can be clearly identified.

	Years	Mean landholding for all county taxpayers in acres	Landholding of those indicted before the county court in acres
Lancaster, PA	1729-1750	131	140
Cumberland, PA ²⁷	1750-1781	50	54
Washington, PA ²⁸	1782-1797	163	248
Bedford, PA	1771-1783	158	213

Table 4: Comparative Landholding of Accused

At first sight, this evidence from the Court of Quarter Sessions might seem to suggest that criminals in the Pennsylvania backcountry were not poor settlers, but rather the comparatively wealthy and the well-connected. However, the prosecution of crime was very different from actual criminal activity. As in the twenty-first century, the number of crimes prosecuted can be very different from the number of crimes committed, and those prosecuted may not represent a random cross-section of all those who commit crimes. The indictment of wealthier residents thus says much more about the relationship between the court and the community than it does about criminal activity and such patterns should not be particularly surprising. Indeed, Robert Shoemaker's study of petty crime in early eighteenth century Middlesex, England, has found similar patterns of prosecution of wealthier residents.²⁹

Essentially poorer residents were less likely to be indicted for some crimes than their wealthier neighbors. Whereas two poor farmers might brawl in the fields and get little attention, a fight between two gentlemen might attract the attention of the court. It mattered to the court when

²⁷ The figures for Cumberland are based on the 1778 tax list alone.

²⁸ Figures for Washington are based on the 1781 tax list alone.

²⁹ Robert B. Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, c.1660-1725* (Cambridge: Cambridge University Press, 1991).

members of the county elite brawled in public; if two poorer residents fought in public it was of much less concern. Poorer residents might also turn to other forums to resolve their disputes. In January 1744 David Allen and William Armstrong were engaged in constructing a barn for a neighbor. When, Armstrong was faster than Allen at cutting lumber he boasted “I have beat you.” Not to be outdone, Allen retorted but “you have a stinking Breath.” The pair began to fight and rolled across the field tearing at one another, before they were parted by a neighbor. The case could easily have ended up in the county court as an assault charge, but the two took the case instead to the church session which forced the two neighbors into reconciliation.³⁰

The court records of western Pennsylvania therefore lend little support to the claim that violence and disorder were somehow rooted in ethnicity or poverty. However, backcountry settlers in western Pennsylvania were repeatedly described by contemporaries as lawless. Traveler Isaac Weld, for instance, described many of the frontier settlers as “lawless people,” while even the Pennsylvania Assembly described the settlers around Pittsburgh as a “lawless ungovernable crew.”³¹ Yet frontier settlers were not strictly “lawless” and lawlessness was certainly not a state that they desired and their relationship with the law and the courts was far from oppositional. In many ways the relationship of settlers with the church courts reveals the complexity of the relationship between courts, law and justice in early Pennsylvania. Many religious denominations encouraged their adherents to avoid using the public courts and to resolve their disputes within the church, in part to avoid the public disrepute that might accompany a court case. Many Quakers, in particular, initially sought to avoid resort to the county courts attempting to resolve disputes amongst their own

³⁰ Fagg’s Manor Presbyterian Church Session Minutes, January 3, 1744, Presbyterian Historical Society, Philadelphia.

³¹ Barr, *Colony Sprung from Hell*: 125; Isaac Weld, *Travels Through the States of North America, and the Provinces of Upper and Lower Canada, During the Years 1795, 1796 and 1797* (London: John Stockdale, 1799). 72.

members. George Fox, founding father of the Quakers, argued that “no member should appeal to law; but that he should refer his difference to arbitration, by persons of exemplary character, in the society.” Quakers concluded that “law-suits are at best tedious. They often destroy brotherly love in the individuals while they continue. They excite also, during this time, not unfrequently, a vindictive spirit, and lead to family-feuds and quarrels.” However, by the eighteenth century many Quakers appear to have been quite willing to use the court system, and even cases that were resolved within Quaker meetings often stipulated that those who accepted the meeting’s ruling had also to sign legally enforceable penal bonds and thus used the county courts to enforce internal arbitration.³²

Similarly, in the Presbyterian settlements of the Pennsylvania backcountry many settlers initially avoided using the county courts, in part because of the association of the courts with persecution by the Anglican Ascendancy in Ireland. However, increasingly wealthier Presbyterians began to take their cases to the country courts. The Presbytery of Donegal in Lancaster County noted that the county court had become such a popular forum to settle disputes that it was dismayed that “so many deliberately... Chuse to sacrifice the peace of Christs Chh to their own privat interests and humour.” So frequent had use of the county courts become that in 1734 one resident of Donegal declared that “there was no need of session of Judicatories,” everything could be done by the court.³³

³²Thomas Clarkson, *A Portraiture of Quakerism. Taken from a View of the Education and Discipline, Social Manners, Civil and Political Economy, Religious Principles, and Character of the Society of Friends*, 3 vols. (London: Longman, Hurst, Rees, and Orme, 1806). 69-70; Marietta and Rowe, *Troubled Experiment*: 48; James A. Henretta, “Magistrates, Common Law Lawyers, Legislators: The Three Legal Systems of British America,” in *The Cambridge History of Law in America*, ed. Christopher L. Tomlins and Michael Grossberg (Cambridge: Cambridge University Press, 2008), 563; Patrick Griffin, *The People With No Name: Ireland’s Ulster Scots, America’s Scots Irish and the Creation of a British Atlantic World, 1689-1764* (Princeton: Princeton University Press, 2001). 23, 37-45; Offutt, *Of “Good Laws” and “Good Men”*: 66-68, 251-58.

³³ This enthusiasm of some Presbyterian settlers for the county courts may be seen in the numbers of settlers with surnames of Scottish origin who served on juries. In both Cumberland and Washington counties settlers with names of Scottish origin were more likely to serve as justices of

In the tradition of the church courts, for many of these settlers the role of the courts was as much about finding a means of resolving disputes between neighbors as it was about ruling on the letter of the law. Cornelia Hughes Dayton has argued that the period 1680-1720 was a turning point in colonial American law when there was a transition from “a communal, informal, mode of resolving disputes to a rationalized, lawyerly mode.” However, the tradition of communities using the courts to resolve internal disputes remained very strong in Pennsylvania and formal referees were still widely used in Pennsylvania until the 1790s.³⁴

What was unusual about western Pennsylvania was the very complex relationship between settlers, the county court and the process of law. At first sight many settlers, particularly those who protested like the Black Boys or the Whiskey Rebels, had every reason to disengage from the court system. Like the protestors in western Massachusetts in Shays’ Rebellion or in North Carolina in the Regulator Movement, protestors in western Pennsylvania often targeted the courts and sought to hinder court business. Settlers sometimes physically tried to prevent the courts from proceeding with their business by intimidating court officials or by obstructing court procedure.³⁵ Opposition to the courts and to judicial authority had clear sources in western Pennsylvania. During the Seven Years’ War justices of the peace were responsible for drafting supplies and horses for the provincial and regular forces defending the frontiers and formed the backbone of local defense activities such as the construction of forts and blockhouses and the deployment of local volunteer forces. The failure of provincial authorities to offer what settlers saw as adequate protection to the frontier left a legacy of

the peace or other court officers or attorney, and in Washington were substantially more likely to serve on juries than other members of the community. Griffin, *People With No Name*: 129-30.

³⁴ Cornelia Hughes Dayton, “Turning Points and the Relevance of Colonial Legal History,” *William and Mary Quarterly* 50 (1993): 9, 11; Henretta, “Magistrates, Common Law Lawyers, Legislators,” 562; Horwitz, *Transformation of American Law*: 151.

³⁵ Bouton, “A Road Closed,” 855-87.

bitter hostility, some of which was directed against local justices.³⁶ In the wake of a renewed frontier war following “Pontiac’s Rebellion” in 1763, some frontier justices seemed more concerned to protect Indians than to protect backcountry settlers. In Paxton Township in Lancaster County a party of fifty-seven settlers, popularly celebrated as “The Paxton Boys,” rode to nearby Conestoga where they slaughtered six Conestoga Indians. Not content with this action, a larger mob returned a few days later to butcher the survivors who had taken shelter in the county workhouse. Despite intense pressure from London and Philadelphia, attempts to bring the perpetrators to court failed.³⁷ After 1763, however, justices increasingly trod a careful path, particularly when the crown and provincial authorities sought to halt western expansion in the wake of the royal proclamation of 1763. In March 1765 a wagon-train and its military escort carrying gifts and trade goods bound for the Ohio was attacked by a mob of Cumberland County frontiersmen calling themselves the “Black Boys,” at Sideling Hill near Fort Loudoun in Pennsylvania. The mob looted all the trade goods and forced the escort to flee to the safety of the nearby fort. Over the following months, as army officers tried to restrain the spread of western settlement and evicted squatters from their lands, western Pennsylvania seemed to descend almost into anarchy and the judicial authorities seemed unwilling to halt the violence and disorder.³⁸ One of the most notorious incidents occurred in Cumberland County in

³⁶ Thomas Lloyd to James Burd, October 8, 1757, Shippen Family Papers, Vol. 3, HSP; Matthew C. Ward, *Breaking the Backcountry: The Seven Years’ War in Virginia and Pennsylvania, 1754-1765* (Pittsburgh: University of Pittsburgh Press, 2003). 59-90.

³⁷ Rev. John Elder to Governor Penn, December 16, 1763, Rev. John Elder to Colonel Shippen, February 1, 1764, Elder Collection, Historical Society of Dauphin County; Samuel Hazard, ed. *Minutes of the Provincial Council of Pennsylvania: from the organization to the termination of the proprietary government* [spine title, *Colonial Records of Pennsylvania*], 16 vols. (Harrisburg: Theophilus Fenn, 1838-1853), 9:89-90, 100 04-05; Peter Rhoads Silver, *Our Savage Neighbors: How Indian War Transformed Early America* (New York: W.W. Norton, 2008). 174-81; Kenny, *Peaceable Kingdom Lost*: 130-46.

³⁸ Franklin to Johnson, 12 September 1766, *Collections of the Illinois Historical Library*. 34 vols. (Springfield: The Trustees of the Illinois State Historical Library, 1915-1940), 11.; Nathaniel McCulloch to George Croghan, 12 March 1765, John Penn to Sir William Johnson, 21 March 1765,

February 1768 when Frederick Stump slaughtered six Indians. The provincial authorities attempted to prosecute Stump but backcountry justice moved slowly for the murderer of an Indian. Superintendent for Indian Affairs Sir William Johnson fretted “I much fear that the Lawless Gentry on the frontiers will render it worse by Screening the Murderer.” Eventually Stump was apprehended, but almost immediately his neighbors stormed the jail and freed him; he would not face a colonial court.³⁹

Over the next two decades, as opposition to central authority continued, western settlers engaged in a range of activities to demonstrate their resistance to the application of the law, including numerous prison rescues of those accused of breaking the law and ritualized violence targeted at court officials. In the summer of 1781, mobs of disgruntled backcountry settlers in Pittsburgh and Washington County overturned election results with which they disagreed. The following summer the commander of Continental Army troops in Pittsburgh, William Irvine, complained bitterly of his “very troublesome command” in Pittsburgh, aggravated by his “being obliged to quarrel with the inhabitants.” Between 1784 and 1790 blacked gangs repeatedly attacked state excise collectors and court officials across western Pennsylvania. In 1786, for instance, protestors in Westmoreland County prevented the county court from holding foreclosure auctions. These protests were not simply the work of angry mobs. Dorsey Pentecost, stressed that the protests were “not done in a Gust of Passion, but cooly, deliberately, and Prosecuted from day to day.” In 1791, parties of militia

James Sullivan, et al., ed. *The Papers of Sir William Johnson* (Albany: University of the State of New York, 1921-1965), 11:635-36, 43-45.; Nathaniel McCulloch to George Croghan, March 7, 1765, Louis Waddell et al., eds., *The Papers of Henry Bouquet*, 6 vols. (Harrisburg.: Pennsylvania Historical and Museum Commission, 1951-1994), 6:767-68.

³⁹ Johnson to Gage, 18 February 1768, *Collections of the Illinois Historical Library*, 16.; Johnson to the Lords of Trade, 14 March 1768, Edmund B. O’Callaghan and Berthold Fernow, eds., *Documents Relative to the Colonial History of the State of New York; Procured in Holland, England and France*, 15 vols. (Albany: Parsons Weed, 1853-1887), 8:53-54.; Gage to Shelburne, 30 January 1768, Carter, *The Correspondence of General Thomas Gage with the Secretaries of State, 1763-1775*, 1:163-64; G. S. Rowe, “The Frederick Stump Affair, 1768 and its Challenge to Legal Historians of Early Pennsylvania,” *Pennsylvania History* 49 (1982): 259-88.

chanting “Liberty or Death” rioted in Lewistown, to demand the dismissal of a local justice of the peace. While often directed at the consequences of legal rulings, the activities of these protestors rarely attempted to halt completely the process of law, but instead sought to direct it in different, what the protestors perceived as more equitable, directions.⁴⁰

There have been several important recent studies of disaffection in western Pennsylvania. In particular Terry Bouton and Daniel Barr have demonstrated how the courts played an important role in the disputes in western Pennsylvania as agents of central authority. Barr sees the disorder in western Pennsylvania as originating largely in jurisdictional conflicts between Virginia and Pennsylvania in the west which allowed for the development of a distinctive localized political culture that resisted central authority. Bouton on the other hand has argued that the roots of frontier disaffection lay in deeper social, perhaps even class, conflicts within western society. These tensions boiled over into disputes over fiscal policy and taxation as settlers in western Pennsylvania became “convinced that the revolutionary elite had remade government to benefit themselves and to undermine the independence of ordinary folk.” While Bouton stresses that the protestors did not see

⁴⁰ William Irvine to Benjamin Lincoln, May 2, 1782, Consul Willshire Butterfield, ed. *Washington-Irvine Correspondence: The Official Letters which Passed Between Washington and Brig.-Gen. William Irvine and Between Irvine and Others Concerning Military Affairs in the West from 1781 to 1783* (Madison: D. Atwood, 1882), 172; Hazard, *Pennsylvania Archives*: 10:757; James Kirby Martin, “The Return of the Paxton Boys and the Historical State of the Pennsylvania Frontier,” *Pennsylvania History* 38 (1971): 117-33; Alden T. Vaughan, “Frontier Banditti and the Indians: The Paxton Boys’ Legacy, 1763–1775,” *Pennsylvania History* 51 (1984): 1-29; Dorothy E. Fennell, “From Rebeliousness to Insurrection: A Social History of the Whiskey Rebellion” (Ph.D. thesis, University of Pittsburgh, 1981), 13-22; Robert G. Crist, “Cumberland County,” in *Beyond Philadelphia: The American Revolution in the Pennsylvania Hinterland*, ed. William Pencak and John B. Frantz (University Park: Pennsylvania State University Press, 1998), 107-32; Rob Harper, “Looking the Other Way: The Gnadenhutten Massacre and the Contextual Interpretation of Violence,” *William and Mary Quarterly* 64 (2007): 634; Blessing, “Lewistown Riots,” 285-321; Boyd Crumrine, *History of Washington County, Pennsylvania, with Biographical Sketches of Many of its Pioneers and Prominent Men...* (Philadelphia: L. H. Everts & Co., 1882). 96; Terry Bouton, *Taming Democracy: “The People,” The Founders, and the Troubled Ending of the American Revolution* (Oxford: Oxford University Press, 2007). 158.

themselves as radicals, in many ways their view of the directions in which American society should develop were far-reaching.⁴¹

While the intimidation of justices, the frequent jail rescues, and the recurrent rioting, suggests that many western settlers opposed the rule of law, their opposition was more nuanced and centered specifically on the manner in which the courts functioned and the ways in which the county courts buttressed what was seen as illegitimate authority. While seeking to overturn the judgments of the courts, most rioters were not opposed to the rule of law itself. Indeed, James Smith, a leader of the Cumberland County Black Boys, maintained that he was “convinced... of the absolute necessity of the civil law, in order to govern mankind.”⁴² These are not the words of a radical aiming to overthrow the legal and political order. Protestors in western Pennsylvania did not reject the role of the courts in administering their communities, but sought a greater role for themselves in that process. In 1787, when residents of Washington County gathered to protest the activities of the county court, they did not seek the dissolution of the courts in the west but instead urged the courts “to interfere by their legal authority” in the government of the region. Western settlers were not opposed to the law; they were opposed to the ways in which the courts operated and sought courts that were more responsive to their needs.⁴³

The courts themselves, particularly the justices of the peace, also played a role in these protests. Firstly, the justices were reluctant to intervene to halt the protests. When the Paxton Boys began to assemble in Lancaster before proceeding attacking the Conestoga Indians, appeals went out

⁴¹ Barr, *Colony Sprung from Hell*; Bouton, *Taming Democracy*: 4, 258.

⁴² James Smith, *An Account of the Remarkable Occurrences in the Life and Travels of Col. James Smith during his Captivity with the Indians, in the Years 1755, '56, '57, '58, & '59* (Lexington: John Bradford, 1799). 111.

⁴³ *Pittsburgh Gazette*, February 17, 1787.

to the local justices for assistance in preventing a massacre, but “the majistrates could not be found though the event occurred in day light—whether thro fear or that they connived at it was never known. Their excuses seemed too trifling to be admitted—one could not find his wig.”⁴⁴ When parties of “Black Boys” began assembling around Fort Bedford in western Cumberland County, to intercept goods and supplies they believed were being sent to the Ohio Indians, only one justice of the peace, James Maxwell, opposed their activities. The British commander in western Pennsylvania, Lieutenant-Colonel John Reid, maintained that three of the county’s justices of the peace accompanied the rioters and actively encouraged their activities. Indeed, the rioters openly assembled at the home of Justice William Smith, the brother-in-law of James Smith, the ringleader of the violence. Throughout the 1780s justices, court officials, and juries routinely protected those who were unable to pay taxes by refusing to proceed with writs of execution, halting lawsuits and ultimately acquitting the accused.⁴⁵

In many ways, the activities of the justices of the peace should not be too surprising because the justices had a close relationship with their communities, a relationship that was codified under Pennsylvania’s democratic constitution of 1776. Under the constitution each county ward elected two individuals, one who whom would be appointed as justice of the peace for the county. However, during the 1780s this system came under growing attack by eastern mercantile interests. In the more conservative constitution of 1790 judges were directly appointed by the governor with no popular selection.⁴⁶ In Washington County, for instance,

⁴⁴ Arthur Bradford, “A Brief Statement of Facts Relating to the Final Settlement of Columbia, Lancaster County, Pennsylvania,” Lancaster County Papers, 1724-1816, HSP.

⁴⁵ Hazard, *Colonial Records of Pennsylvania*, 9:269-70; Smith, *Life and Travels of Col. James Smith*: 108-13; Bouton, *Taming Democracy*, 145-167.

⁴⁶ Egle and Linn, *Pennsylvania Archives*, 10:743-44, 78; Crumrine, *Courts of Washington County*: 32; Shugart and Shugart, “Courts of Cumberland County,” 5-6.

Alexander Addison was appointed to the presidency of the county court. Addison was hardly a representative of the county community. A wealthy, high Federalist attorney, educated in law at Aberdeen University in Scotland, he had only emigrated to the United States in 1785 and he lived in some splendor in Pittsburgh not in rural Washington County.⁴⁷ It is not surprising that he frequently came into conflict with the other justices and with the county community. In October 1792, frustrated by the refusal of some of the other county justices to convict rioters against the Whiskey Excise, and finding that in many cases “the Prosecutor... abandoned the prosecution,” Addison attempted to direct the prosecution himself. However, the county justices refused to cooperate arguing that “it was not our duty to hunt after prosecutions.”⁴⁸

While much of the protest that took place in western Pennsylvania, from the Paxton Boys to the Whiskey Rebellion, involved the county courts in various ways, protestors did not seek to halt all court activities and sought to maintain some form of forum for resolving their disputes.⁴⁹ That settlers who were often in open dispute with the state and legal authorities sought to impose an alternative system of law, rather than dispense with the system of law completely, says much about their attitudes to the role of law and the county courts. Their concerns reflected the changing relationship of the county court in Pennsylvania with the community. In the early eighteenth century the central role of the county court had still been the resolution of disputes, rather than the more mechanistic dispensation of justice. As stated in Michael Dalton’s *The Countrey Justice*, the widely

⁴⁷ Crumrine, *History of Washington County*: 243; G. S. Rowe, “Alexander Addison: The Disillusionment of a ‘Republican Schoolmaster’,” *The Western Pennsylvania Historical Magazine* 62 (1979): 221-50.

⁴⁸ John Blair Linn and William Henry Egle, eds., *Pennsylvania Archives*, 2nd Series (Harrisburg: E.K. Meyers, 1890), 4:31-32.

⁴⁹ Bouton, “A Road Closed,” 855-87; William Hogeland, *The Whiskey Rebellion: George Washington, Alexander Hamilton, and the Frontier Rebels who challenged America’s Newfound Sovereignty* (New York, N.Y. : Scribner, 2006); Slaughter, *Whiskey Rebellion*.

read guide for justices in the years before the Revolution, the aim of the justice of the peace was specifically “to do Justice... (which is, to yield to every man his own by even portions, and according to the Laws, Customs, and Statutes of this Realm,) without respect of persons.”⁵⁰

The belief that the court should “yield to every man his own by even portions” remained strong in the Pennsylvania backcountry in the late eighteenth century. Visiting his extensive land claims in western Pennsylvania in 1784, George Washington discovered many families had settled on his lands on Millers Run. When Washington warned the settlers that he owned the land and intended to evict them they came to him “to set forth their pretensions to it; & to enquire into my right... [and] to discover all the flaws they could in my Deed.” The made it quite clear that “they meant to stand suit, & abide the Issue of the Law.”⁵¹ When the case finally came before the Washington County Court in October 1786, Washington’s agent Thomas Smith informed him that “many of the Jury wished it had been in their power to have given Verdicts for the Defendants.” However, Washington won his case; the letter of the law was on his side. What is particularly significant about this episode is not that Washington won, but that the settlers had placed so much faith in the court system and that while the jury supported their cause, it was statute law which prevailed over equity. Even Smith felt compelled to remind Washington “that it was more their misfortune than their fault.” He also felt compelled to stress to Washington the equity of the case. “You have now *thirteen* Plantations—some of them well improved... the improvements increase the value of the Land much more than all the expences of the Ejectments—those who mad[e] them are now reduced to indigence—they have put in Crops this season, which are now in the ground—they

⁵⁰ Michael Dalton, *The Countrey Justice Containing the Practice of the Justices of the Peace as Well in as out of their Sessions ...* (London: John Streater, James Flesher, and Henry Twyford, 1666). 7.

⁵¹ September 14, 20, 1784, Donald Jackson and Dorothy Twohig, eds., *The Diaries of George Washington*, 6 vols. (Charlottesville: University Press of Virginia, 1979), 4:21-23 27-31.

wish to be permitted to take the grain away—to give this hint may be improper in me—to say more would be presumptuous.”⁵²

While protestors in western Pennsylvania may have appeared radical in many ways, what many sought was greater equity in the courts. Kenneth Owen has demonstrated how many of those who rioted across Pennsylvania during the era of the Revolution, viewed their protest and the violence which accompanied it as having a legitimate political role within political discourse. This essential conservatism is also found in the Wyoming Valley in northern Pennsylvania. Here from the 1760s to the 1780s, settlers whose allegiance lay with Connecticut clashed with settlers whose allegiance lay with Pennsylvania. While the conflict has often been portrayed as exceptionally violent, in fact Kathryn Shively Meier has demonstrated that violence in the Wyoming Valley was often surprisingly restrained. Despite the chaos on the frontier, settlers were reluctant to resort to violence because they wanted to be regarded as legitimate; they required their claims to be recognized for their land-holdings to possess any value.⁵³

This outlook is also revealed in the western Pennsylvanians’ attitudes to the court system. Western protestors did seek to halt the activities of the courts by blocking roads and disrupting the court system. But settlers did not demand that the law be overturned, instead they demanded a forum for binding arbitration outside the formal court system, where lawyers could be excluded from the

⁵² Thomas Smith to George Washington, November 7, 1786, W. W. Abbot and Dorothy Twohig, eds., *The Papers of George Washington*, Confederation Series (Charlottesville: University Press of Virginia, 1992-1997), 4:339–43.

⁵³ Kenneth Owen, “Violence and the Limits of the Political Community in Revolutionary Pennsylvania,” in *Between Sovereignty and Anarchy: The Politics of Violence in the American Revolutionary Era*, ed. Patrick Griffin, et al. (Charlottesville: University of Virginia Press, 2015), 165-86; Kathryn Shively Meier, ““Devoted to Hardships, Danger and Devastation”: The Landscape of Indian and White Violence in Wyoming Valley Pennsylvania, 1753-1800,” in *Blood in the Hills: A History of Violence in Appalachia*, ed. Bruce E. Stewart (Lexington: University Press of Kentucky, 2011), 53-79.

process. During the American Revolution, along the North Branch of the Susquehanna, settlers had elected “fair play men” to form tribunals to settle their own disputes. Although their rulings had no legal legitimacy, they were accepted by all and, more importantly, “were received in evidence, and confirmed by judgments of courts.”⁵⁴ During the Whiskey Rebellion settlers at Mingo Creek, in Washington County, “harassed with suits from justices and courts... wished a less expensive tribunal,” and established their own parallel county court system based at the Mingo-Creek meeting house.⁵⁵ Settlers sought a legal system which was more responsive to their concerns and in many cases where they felt that the formal courts would not provide this, they used their own informal processes. Hugh Henry Brackenridge noted that many settlers believed that “*good sense*, without a knowledge of legal rules, might suffice,” and that this created an increased demand for arbitration outside of the formal court system. Good sense could often override the rulings of the courts. Alexander Addison maintained that protestors believed that “the people *here* might lawfully correct any errors of their public servants. On these principles, every neighbourhood, considering itself as the people, thought it had a right to do as it pleased.”⁵⁶

While Addison might have wanted to portray these protestors as “lawless” they clearly sought law, but their vision of law was very different from that which the courts were dispensing.

⁵⁴ Charles Smith, *Laws of the Commonwealth of Pennsylvania: From the Fourteenth Day of October, One Thousand Seven Hundred, to the Twentieth Day of March, One Thousand Eight Hundred and Ten* (Philadelphia: John Bioren, 1810). 2:195; Marcus Gallo, ““Fair Play Has Entirely Ceased, and Law Has Taken Its Place”: The Rise and Fall of the Squatter Republic in the West Branch Valley of the Susquehanna River, 1768–1800,” *The Pennsylvania Magazine of History and Biography* 136 (2012): 405-34; George D. Wolf, *The Fair Play Settlers of the West Branch Valley, 1769-1784: A Study of Frontier Ethnography* (Harrisburg: Pennsylvania Historical and Museum Commission, 1969). 30-32; Bouton, “A Road Closed,” 855-87.

⁵⁵ Brackenridge, *Incidents of the Insurrection*: 3:25.

⁵⁶ *Law Miscellanies*: 287; Alexander Addison, *Reports of Cases in the County Courts of the Fifth Circuit, and in the High Court of Errors and Appeals, of the State of Pennsylvania, and Charges to Grand Juries, etc* (Washington, PA: John Colerick, 1800). 2:122.

Economic changes, particularly those that went hand-in-hand with Alexander Hamilton's new financial systems, demanded that the courts produce fast and predictable rulings, that they dispense law rather than the settlers' good sense, that they be predictable rather than equitable. In seeking to recover his lands on Millers Creek Washington needed to know that the court would consider the primacy of the law and not the equity of the case. These changes undermined the ability of local communities to arbitrate and resolve disputes within the existing court system. The rise of professional lawyers and then the impact of the American Revolution, and the resulting undermining of English common law, began to change the role of the courts and challenged the abilities of both juries and justices of the peace to interpret the law. As the number and influence of professional lawyers grew during the eighteenth century, conflict increased between the professional lawyers and the amateur justices and magistrates, viewed by lawyers as woefully uneducated in the law. At the same time there were growing concerns about the role and appropriateness of English common law in the North American colonies and then the United States. Brackenridge remarked that "The common law itself, therefore, became a subject of *defamation*... What was *common law*, seemed to be uncertain, and could not be understood."⁵⁷ Many litigants were further frustrated by both the high cost and the slow speed of the legal process. These frustrations were summed up by William Duane who reminded potential plaintiffs to "recollect the length of time suits have been kept in courts; let every one recollect the sums of money paid as costs; let any one recollect the fees paid to lawyers, and how many thousands of dollars their annual incomes are stated at." He concluded "do you not dread and abhor a law suit as an Egyptian plague? Would you not sustain a considerable injustice

⁵⁷ Brackenridge, *Law Miscellanies*: 287; Pole, "Reflections on American Law and the American Revolution," 123-59; Horwitz, *Transformation of American Law*: 6-30; Henretta, "Magistrates, Common Law Lawyers, Legislators," 555-92.

rather than go and ask justice? Is not the law shunned by *wise* and *good* men, while it is sought by the *rogues* and *fools*? Yea, are not more *ruined* than *relieved* who go to court?”⁵⁸

What many western Pennsylvanians opposed was not the abstract concept of the rule of law itself, but rather the functioning of the courts and the ways in which law was interpreted. They opposed the cost of lawyers, and the ways in which the courts could rule against the obvious equity of cases and deliver rulings in favor of wealthy men such as George Washington. As the process and procedure of law was transformed, conflict between the settlers’ notions of law and those of the state increased steadily from the middle of the eighteenth century. Settlers’ concerns corresponded with broader republican anxieties about the role of the courts and of law in the new republic. Thomas Jefferson argued that “a strict observance of the written laws is doubtless one of the high duties of a good citizen: but it is not the highest. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, and property & all those who are enjoying them with us; thus absurdly sacrificing the ends to the means”⁵⁹ It was within this framework of opposition to the functioning of the courts rather than the abstract concept of law itself that much of the disorder in western Pennsylvania took place.

These activities had an impact on the functioning of the court system. Prosecution rates for assault in Washington County were between one half and one quarter of rates in other counties. The prosecution rates in Ohio and western Kentucky in the next two decades were between three and four times the prosecution rate of Washington County in the 1780s and 1790s. Far fewer settlers

⁵⁸ William Duane, *Sampson against the Philistines, or, The Reformation of Lawsuits: And Justice Made Cheap....* (Washington, D.C.: W. Duane, 1805). 32.

⁵⁹ Thomas Jefferson to John Colvin, September 20, 1810, J. Jefferson Looney, ed. *The Papers of Thomas Jefferson*, 9 vols., Retirement Series (Princeton Princeton University Press, 2004-), 3:99.

were coming before the court in Washington County than in other counties in Pennsylvania and elsewhere. It is for this reason that Marietta and Rowe have suggested that assaults and violent crime were less common in the west than they were in the east.⁶⁰ Yet this pattern reveals not a lower “crime rate” but the settlers’ reluctance to bring crimes to the court and their opposition to the ways that the courts were functioning. Indeed, not only were the prosecution rates much lower, but so were the rates at which the courts convicted those who were accused of crimes. In Lancaster County in the years before 1750, seventy-one percent of cases that came before the county court, almost three-quarters of the indictments, led to a conviction. Such a conviction rate continued after the Revolution and was comparable to those found in England at the time. In Middlesex, England, between 1760 and 1775, eighty percent of cases resulted in a conviction. After the Revolution conviction rates remained high in Lancaster with eighty-seven percent of indictments resulting in a conviction. Both counties on both sides of the Atlantic reveal a relatively high level of success on the part of the courts in pursuing convictions.⁶¹ However, those who came before a jury in Washington County had a better chance of acquittal than conviction. In Washington County between 1782 and 1797 only one in five defendants were convicted and the overwhelming majority of those convictions resulted from the defendants themselves pleading guilty.⁶²

⁶⁰ Marietta and Rowe, “Violent Crime, Victims, and Society in Pennsylvania, 1682-1800,” 33.

⁶¹ Peter King, “Punishing Assault: The Transformation of Attitudes in the English Courts,” *Journal of Interdisciplinary History* 27 (1996): 49; Thomas P. Slaughter, “Interpersonal Violence in a Rural Setting: Lancaster County in the Eighteenth Century,” *Pennsylvania History* 58 (1991): 115.

⁶² In Washington of 655 defendants brought before the court only 144 were convicted, a rate of only 22.0 percent or just over one out of every five cases. However, of those 144 who were convicted, eighty-four had pled guilty, meaning that only sixty defendants out of 655 who were charged—less than one in ten—pled not guilty and were later convicted, and the majority of convictions actually resulted from the defendants themselves pleading guilty. The Whiskey Rebellion itself, very surprisingly, does not seem to have had a major impact on the prosecution or conviction rates.

By the 1790s many settlers sought alternative means of resolving disputes which had previously come before the courts, and thus removed the influence of elites, particularly eastern elites, to influence the resolution of these disputes. Some settlers may have returned to the church courts, but others turned to informal associations such as the fair play settlers or the Mingo Creek Association. Yet others returned to even more traditional ways of resolving disputes with fist or knife. It is difficult to ascertain how far the reluctance of settlers to resolve their disputes in the county court may have increased the incidence of petty violence, and how far their reluctance to use the courts may have heightened the perception of eastern elite observers that the west was lawless, but the changes in western Pennsylvanians' perceptions of the relationship between the community, the courts and the law in the second half of the eighteenth century certainly affected the nature of backcountry society.

Understanding the complexity of the relationship between the law, the courts, and the communities of western Pennsylvania is fundamental to understanding the nature of the disaffection that spread across western Pennsylvania in the second half of the eighteenth century and is also essential to comprehending the activities of the Whiskey Rebels. Neither ethnicity nor poverty were central to shaping the disorder in the backcountry, but the relationship of settlers with the courts did play a central role. Settlers in the Pennsylvania backcountry in the late eighteenth century sought to shape a legal system which was more responsive to their concerns and avoided the formal courts, using their own informal processes when possible. It was for this reason that so few settlers brought cases to court, and why so many cases were delayed before the court and eventually abandoned as settlers resolved their disputes outside the formal forum of the court. Even when settlers did not participate in the regular activities of the county court they often sought an alternative forum such as the fair play settlers. An understanding of the nature of opposition to the law in west and the

relationship of the courts to the community is essential to comprehending the nature of the broader protests across the region that culminated in the Whiskey Rebellion. Ultimately it was not the concept of law that generated opposition in the Pennsylvania backcountry, but rather the process of law through the actions of court officers and provincial and federal authorities. It was the opposition of settlers to the process of law that created the designations of “lawless” and “violent” which were so often applied to them, but settlers rarely sought to discard the law completely.